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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Cable Home Wiring)

MM Docket No. 92-260

Comments of
CONTINENTAL CABLEVISION, INC.

Introduction

Continental Cablevision, Inc. is the third largest cable system operator in the United States, serving more than 2,850,000 cable subscribers in 16 states.

Section 16(d) of the 1992 Cable Act amends Section 624 of the Communications Act of 1934 to require the FCC to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber."^{1/} As the Commission notes, the 1992 Act's legislative history indicates that the FCC's principal role under this amendment is to adopt rules that enable a cable "subscriber" in certain circumstances to be able to acquire cable home wiring upon the termination of cable service.

The major issues before the Commission are:

^{1/} 47 U.S.C. §544(i).

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(1) to define who is a "subscriber" within the meaning of this section of the 1992 Act;

(2) to specify the circumstances where such subscribers have the right to acquire cable home wiring, and those where the cable operator has the right to refuse to allow such acquisition; and

(3) to determine whether any rules it adopts in this area should apply prospectively or retroactively.

Continental Cablevision believes that the definition of "subscriber," consistent with the 1992 Act's legislative history, should be limited to individual subscribers, not owners of multiple dwelling units. Continental also believes that the circumstances under which an individual cable subscriber has the right to acquire home wiring should be limited in order to protect an operator's legitimate concerns concerning theft of cable service. Any new rules the FCC adopts should apply only prospectively, and not disrupt established contracts. Finally, the FCC need not, and should not, establish standards for the pricing of home wiring or express any opinion as to the proper locus of ownership of home wiring prior to termination of service.

I. The FCC Should Define "Subscriber" For Purposes Of The 1992 Act As Limited Solely To Individual Subscribers.

Based on the legislative history cited by the Commission,^{2/} Congress clearly intended that a cable operator would be able to retain whatever rights it has under contract or state law to control the disposition of wiring in the common areas of buildings, such as hallways and utility ducts and closets. Congress has explicitly mandated that this portion of wiring in MDUs be governed solely by contractual agreement between the cable operator and the building owner. Only individual subscribers should be entitled to ask to purchase home wiring upon termination of service.

II. Because Of The Significant Theft Of Service Problem In The Cable Industry, Cable Operators Should Not Be Required To Allow A Subscriber To Acquire Home Wiring If A Potential For Theft Of Service Exists.

The Commission asks for comment on the circumstances under which a cable operator that has chosen to assert ownership rights in the home wiring it installed might have a legitimate interest in not allowing home wiring to be acquired by a subscriber, and where a cable operator should have the right to remove such wiring.

Continental believes that cable operators should have the right to remove home wiring not only in the situations

^{2/} House Report at 119.

highlighted in the legislative history and mentioned in the FCC's Notice --- where "service has been terminated for non-payment or for theft of service"^{3/} --- but also where the operator has a legitimate reason to believe that there is a potential for theft of cable service.

The industry's problem with theft of cable service is dramatic and growing, despite substantial enforcement efforts. Just last month, Continental cooperated with the Los Angeles Police Department in the seizure of an estimated 70,000 converter devices intended for use in the theft of cable television signals in Los Angeles and throughout the United States.^{4/} This followed the seizure of approximately 10,000 such devices in Los Angeles in June. The cable industry's lost revenues in Los Angeles County alone each year due to theft of cable service is estimated to be over \$100 million. This situation is repeated throughout the country. Congress recognized this phenomenon by increasing the criminal penalties for theft of cable service in the 1992 Act.

One of the most common means of subscriber theft of cable service is a subscriber's disconnection of his or her cable service and reconnection through illegal taps and converters, using the internal home wiring initially installed by the cable

^{3/} House Report at 118.

^{4/} See attached press release and articles.

operator. Thus, simply allowing a cable operator to remove home wiring based on an actual finding of a subscriber's theft of service is an inadequate remedy. The House Report also states: "the Committee is concerned especially about the potential for theft of service within apartment buildings."^{5/} Continental is equally concerned about this potential, and where a cable operator has a reasonable belief that such theft may occur, whether in an apartment or an individual residence, it should be able to control the disposition of the wiring.

The Commission should adopt the following criteria for a cable operator's refusal to allow an individual subscriber to acquire home wiring:

(1) A cable operator has an absolute right to remove the wiring if the subscriber has been terminated by the operator for non-payment or theft of service.

(2) A cable operator also has a right to refuse to allow acquisition of home wiring if that operator has "reason to believe that there is a potential for theft of service." A cable operator would be required to produce evidence to establish its reasonable belief in a dispute with a subscriber who believes that he or she has been unjustly denied the ability to acquire the wiring on these grounds. Such evidence could include the

^{5/} House Report at 118 (emphasis added).

fact that, for example, theft of service had been detected in the particular building or neighborhood where the subscriber resided.

III. The FCC Should Enforce Any Rules It Adopts Prospectively Only.

Because cable operators have in place contracts that both parties have relied upon in setting the price for cable installations, the Commission should apply any rules it adopts prospectively only to new contracts entered into by cable operators and customers. Nothing in the 1992 Act or its legislative history calls for a contrary result.

IV. The FCC Should Not Become Involved in Issues Of Pricing of Home Wiring Or Ownership Of Home Wiring Prior To Termination Of Service.

Likewise, nothing in the 1992 Act itself, or the Congressional Reports underlying it, either requires or authorizes the FCC to become involved in setting rates for the acquisition of home wiring by individual subscribers. Congress has amply demonstrated that it knew how to authorize the FCC to set or oversee rates for cable services where it wished to do so. It did so explicitly not only in the area of rate-setting for cable programming tiers and certain types of equipment, but also in cable's pricing of leased access channels. If Congress had meant for the Commission to become involved in overseeing prices charged by operators for acquiring home wiring following

termination of service, it would have said so clearly in the statute.

As the FCC recognizes, practices in the cable industry vary with respect to assertion of ownership interests in home wiring prior to termination of service. The FCC should not involve itself in these questions, which could have serious local tax implications.

Respectfully submitted,

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**Continental
Cablevision**

NEWS RELEASE

**FOR IMMEDIATE RELEASE: October 20, 1992 CONTACT: Continental Cablevision
John F. Gibbs
Vice President,
Corporate and Legal Affairs
or Ron Cooper
Senior Vice President
(310) 647-3000**

The Los Angeles Police Department served search warrants at seven locations throughout Los Angeles on Monday October 19, 1992 and seized an estimated 70,000 devices intended for use in the theft of cable television signals in Los Angeles and throughout the United States. Three related searches and seizures were simultaneously conducted in Las Vegas, Nevada. Monday's searches resulted in the largest seizure of illegal cable television converter boxes in U.S. history.

Monday's seizures were part of an ongoing investigation by Continental Cablevision and the LAPD and follow the seizure of approximately 10,000 such devices valued at over \$1,000,000 in June. The "street value" of the illegal cable boxes seized Monday exceeds \$20 Million. The lost revenue to cable

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television system operators which would result from the use of the 70,000 illegal devices exceeds \$200 Million.

Last week, felony charges were brought in Los Angeles County Superior Court against six individuals in conjunction with the June seizures. John Gibbs, Continental Cablevision Vice President for Corporate and Legal Affairs in Southern California said "More charges can be expected to be filed as a result of Monday's seizures and Continental Cablevision will bring civil actions against the cable thieves".

It is a federal crime as well as a California crime to receive cable television services without paying the local franchised cable operator for those services. It is also a federal and state crime to distribute equipment intended to be used for the unauthorized reception of cable television service. In addition to the criminal punishment of imprisonment and fines, federal and state law authorizes franchised cable television companies to receive restitution and money damages from anyone receiving cable services without authorization or distributing equipment to be used for the receipt of unauthorized cable service.

Industry sources estimate over \$100 million dollars worth of cable television service is stolen each year in Los Angeles County. \$65 million dollars of this theft occurs within the City of Los Angeles.

In addition to the lost revenue to the local cable television industry, cable theft results in huge losses for local governments. For example, the franchise fees which would be paid by local cable operators to the City of Los Angeles on the stolen cable service totals \$3.25 million dollars each year. The \$3.25 million dollars in lost franchise fee revenue to the City of Los Angeles each year could mean an estimated additional 50 police officers, the restoration of community libraries or the re-establishment of 50 fire fighters.

Ron Cooper, Senior Vice President, Continental Cablevision, thanked the Los Angeles Police Department today and applauded their professionalism and their tenacity. "The Los Angeles Police Department clearly recognizes the importance of cable theft as a \$65 million per year white collar crime - just in the City of Los Angeles alone. The seizure certainly validates their concerns." Cooper stated that "Cable theft hurts cable companies, costs jobs, promotes lawlessness, and has cost the City of Los Angeles as much as \$3.25 million in lost franchise fee revenues each year".

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In a statement released today, Ron Cooper stated that "Cable theft is a crime. Continental Cablevision will no longer tolerate the theft of our service".

Ron Cooper added "Our theft efforts are an important part of our cost containment program. Not only will we pursue the sophisticated modification labs and syndicates, but we will also step-up efforts to pursue the end users. Continental Cablevision will seek civil damages and restitution from residents caught stealing our services. That theft may be occurring through tampering with cable connections, utilizing modified converter boxes, adding second outlets without authorization or theft by any other means".

Continental Cablevision has established a 24 hour Theft of Service Tip-line at 1-800-35 THEFT (1-800-358-4338) to receive information regarding the unauthorized receipt of cable television service. Callers can remain anonymous and information can remain confidential.

Continental Cablevision is the largest cable television system operator in Southern California. Continental Cablevision systems pass approximately 900,000 homes in Los Angeles County and Continental Cablevision serves approximately 325,000 paying customers in the County.



**Continental
Cablevision**

**THEFT OF CABLE TELEVISION SERVICE
BACKGROUND INFORMATION**

* It is a Federal and State crime to receive cable television service without paying for it. It is also a Federal and State crime to modify converter boxes or assist others to receive cable television service without paying for it. (47 USC 553,8605, Calif. Penal Code 593d).

* Continental Cablevision 24 hour Theft of Service Tipline 1-800-35-THEFT (358-4338)

* Continental Cablevision's lost revenues in Los Angeles County each year due to theft of cable television service = over \$ 45 million.
(900,000 homes passed, 12% theft, \$35 average revenue per customer per month).

* Cable television industry's lost revenues in Los Angeles County each year due to theft of cable television service = over \$100 million
(2 million homes, 12% theft, \$35 average revenue per customer per month).

* Cable television industry's lost revenues in the city of Los Angeles each year due to theft of cable television service = over \$65 million.
(1.3 homes, 12% theft, \$35 average revenue per customer per month).

* Local governments in Los Angeles County lose over \$5 million each year in potential cable television franchise fee revenues due to cable theft. (Typical 5% franchise fee).

* Penalties for stealing cable television service include fines, imprisonment, civil liability and money restitution.

* For further information contact:

Ron Cooper, Senior Vice President
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Southern California Regional Office

Southern California Regional Office

Cable Boxes Are Seized in Massive Raid

■ **Sun Valley:** Police say the equipment, worth millions of dollars, is part of a fraud scheme.

By JOSH MEYER
TIMES STAFF WRITER

Los Angeles police seized at least 40,000 cable television decoding boxes Monday from a Sun Valley warehouse and six other locations, saying they were for use in a massive conspiracy to defraud cable companies out of millions of dollars in fees.

The decoders found during a surprise raid at the warehouse and electronics laboratory in Sunland alone were worth more



ROLANDO OTERO / Los Angeles Times

L.A. police seized allegedly tampered-with decoding boxes.

than \$4.5 million on the market, said police Lt. Al Corella.

Once hooked up to TV cables and sets however, the decoder boxes could enable cable customers to watch millions of dollars' worth of pay channels such as Home Box Office and Showtime

for free, as well as increasingly popular pay-per-view concerts and sporting events, Corella said.

Corella and other investigators estimated that the boxes, if sold, would allow buyers to receive more than \$100 million worth of

CABLE: Equipment Is Seized in Warehouse

Continued from B1
illegal services.

"It's the largest seizure of its kind that I can recall," said Los Angeles police Lt. John Dunkin. He said the potential "losses to cable companies are substantial."

The boxes are designed for use by customers who already subscribe to a basic cable TV service. They enable users to receive services they do not pay for, by unscrambling the coded signals—already present in the cable—that carry the costlier channels.

Police said customers pay anywhere from \$100 for basic "pancake" decoders to \$400 for deluxe models.

It is illegal to sell or use unscrambling boxes to watch pay TV and pay-per-view events without paying, said Corella and Michael C. Bates, a Continental Cablevision security director and a Los Angeles police consultant.

Also raided were five other locations in the San Fernando Valley and one in Rancho Cucamonga in San Bernardino County.

None of the two dozen or so workers at the warehouse at 8818 Bradley Ave. were arrested Monday, and police would not discuss whether they had any suspects or whether arrests were imminent.

Members of a Los Angeles Police Department task force said their investigation into cable signal theft is continuing, and that the Monday seizures marked the second successful crackdown on cable pirates in four months.

In June, authorities raided a smaller warehouse in Irwindale and seized 10,000 allegedly illegal devices worth an estimated \$1 million. Last week, six people were charged in that case in Los Angeles

Superior Court with conspiracy to commit cable fraud, a felony, according to Corella, head of the task force from the LAPD Burglary Special Section.

Other locations raided were: 13149B Sherman Way, North Hollywood; 8607 Canoga Ave., Canoga Park; 6447 Ellen View Ave., Woodland Hills; 14621 Titus St., Van Nuys; 6312L Derry St., Agoura Hills, and 10572 Acacia St., Rancho Cucamonga.

But police said the Sunland warehouse, an unobtrusive structure in a busy industrial area, was the primary location for a sophisticated, nationwide cable fraud ring.

Throughout the day, police investigators and cable television officials, working as their consultants, tallied up the seized decoding boxes and carted them off to a police warehouse in moving company trucks. Also seized were workbenches used to install unscrambling devices in the cable boxes, according to Corella.

By day's end, however, they had made little progress in clearing out the supplies from the warehouse and adjacent laboratory.

William Prevost, 25, also spent the day wandering the massive structure, grumbling about the seizure of the equipment.

As head of the Gage Systems company, which leases the warehouse, Prevost said he was only making and selling the same kind of cable television boxes that can be legally bought at stores throughout the country. He said there is no law against changing the boxes so they can unscramble cable television signals, as long as the customer pays for those signals, and he said he only sells the equipment to retailers and has no

control over who eventually uses them.

Police would not comment on whether they thought Prevost played any role in suspected illegal activities.

Investigators at the site also conceded that cable piracy laws are confusing and complex at best. But they said there were clear signs of illegal activity at the warehouse, including evidence of tampering with legal equipment to reprogram it.

In this case, unidentified suspects would buy legal cable boxes, change the electronics so the boxes can unscramble the scrambled signals sent out by cable firms, and then sell them on the retail market, said Corella.

Police said it is hard to prosecute cable fraud cases because many cable customers buy the decoder boxes from ads in magazines and don't even know they're breaking the law by decoding pay-per-view cable signals and not paying for them. In addition, Corella said, authorities are hesitant to arrest employees, such as those found working at the Sunland location, unless they can prove the employees knew they were engaged in illegal activities.

Police will now comb the financial records seized Monday to determine who, if anyone, will be arrested, he said.

In addition to lost revenue for cable companies, cable theft results in potential multimillion-dollar losses to cities such as Los Angeles, because cable operators pay the city a fee of 5% of gross receipts.

"If we don't realize the revenues, we don't pay the city for those revenues," said Ron Cooper, of Continental Cablevision.



ROLANDO OVANO / Los Angeles Times

Seized boxes are stored in a police warehouse, where technicians try to figure out what to do with them.

note: The gentleman on the right is Jim Allen, Director
Office of Cable Signal Theft.

West Coast Bust Nets \$20M in Illegal Cable Boxes

By LINDA HAUGSTED
LOS ANGELES — Authorities seized approximately 70,000 illegally altered converter boxes during raids at 10 locations in the Los Angeles area and Las Vegas following a four-month investigation by Continental Cablevision Inc.'s southern California operation. The National Cable Television Association said the seizure represented the largest cable bust to

date. Forty people were detained during the raids, but no charges have been filed yet, pending completion of the investigation, according to John Gibbs, vice president of corporate and legal affairs for the Continental region.

The boxes had a street value of \$20 million, based on a purchase price of \$300 to \$400, he added. The NCTA's Office of Cable Signal Theft added that a doctored box

can be used to steal \$3,200 in programming during the boxes' expected useful life.

The locations had been under investigation since a Continental bust in June. Records from that seizure led to three locations in Las Vegas and seven in Los Angeles and Sun Valley, Calif. The sites had been under surveillance for several months by the Continental anti-piracy unit. The sites had been

shipping out converters via United Parcel Service, Gibbs said.

Law enforcement officials were supportive in executing search warrants once Continental had completed its investigation, Gibbs said adding that the company is stressing the economic loss to the city and the company from piracy.

He estimated that the city of Los Angeles loses \$3.25 million a year in lost franchise fees due to theft of

service. Citywide, Los Angeles' 14 franchises lose \$65 million a year, he said. Nationally, the industry loses \$3 billion a year to theft, according to the OCST.

The hardware seized represented multiple manufacturers and local franchisees, he said. The raid also netted computerized and handwritten customer and contact lists, which will be subject to further investigation, Gibbs added ■

Cable Groups, Telcos File On Rural Exemption

By JEANNINE AYERS
WASHINGTON — If telephone companies are given more freedom to build cable systems in rural areas, then cable should be able to participate more freely in telephony, a coalition of 16 cable groups told the Federal Communications Commission.

The coalition, which included Adelphia Communication Corp., Falcon Cable TV, Newhouse Broadcasting Co. and Viacom International Inc., argued against the FCC's expanding the rural exemption to areas of up to 10,000 people from its current 2,500 ceiling. The MSOs said it would pit independent operators in those communities against the tremendous market power of the telcos, which have a history of anti-competitive conduct.

But if the FCC takes this advice,

